Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review — Petition for	)	CC Docket No. 98-177
Section 11 Biennial Review filed by SBC	)	
Communications, Inc., Southwestern Bell	)	
Telephone Company, Pacific Bell and Nevada Bell	)	

COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S.

In a Notice of Proposed Rulemaking (NPRM) released November 24, 1998, the Commission requested comment on proposals submitted by SBC in its Petition for Section 11 Biennial Review. USTA's member companies strongly support the initiation of a comprehensive review of all of the Commission's rules as required under Section 11 of the Telecommunications Act of 1996 in order to eliminate or modify those rules which are no longer necessary in the public interest. In fact, USTA filed a petition for rulemaking on September 30, 1998 proposing the elimination or streamlining of Commission rules contained in Parts 1, 17, 32, 36, 41, 42, 43, 61, 62, 63, 64, 65, and 69. USTA developed general principles, similar to those articulated by the Commission in the NPRM and previously by Commissioner Furtchgott-Roth, to guide the public interest analysis that Section 11 requires.[1] USTA provided actual rules changes necessary to implement its proposals. A copy of USTA's petition for rulemaking is attached. SBC's petition also meets the requirements of Section 11 and identifies rules which should be eliminated as part of that review. USTA strongly supports SBC's petition.

USTA must take issue with the Commission's determination regarding the process the Commission has employed to conduct its Section 11 review. While there is no question that the Commission has released an impressive number of proceedings which are captioned biennial review, these individual proceedings reflect a piecemeal approach which was not intended by Congress. As stated in the Senate debate, Section 11 "establishes a process that will require continuing justification for rules and regulations every two years. Every two years, in other words, all rules and regulations will be on the table. If they don't make sense, there is a process established to terminate them."[2] Section 11 is also characterized as establishing a process "for continuing attic-to-basement review of all regulations on a two year cycle."[3] It is clear that Congress intended the Commission to review all of its rules every two years and eliminate those which are not consistent with the pro-competitive, deregulatory telecommunications policy framework.

[1]USTA believes that the analytical framework developed by Commission staff is very helpful. However, USTA agrees with Commissioner Furtchgott-Roth's Report on Implementation of Section 11 that it does not appear that the framework was actually applied to all the Commission's rules.

[2]141 Cong.Rec. S7881, June 7, 1995.

[3]*Id.*

The Commission's process has not resulted in an "attic-to-basement" review of its rules. Instead, it has resulted in disparate treatment of similar proposals, such as the USTA and SBC petitions and disparate proposals from the different bureaus.

Appended to USTA's comments, Hahn and Taylor addressed the economic impact of deregulatory efforts in the U.S. and elsewhere and provided evidence showing the large welfare gains that have resulted from such efforts. They estimate that economic regulatory reform can provide welfare gains on the order of 0.3 percent of GDP for the U.S. "So, a serious, exhaustive and quantitative appraisal of the Commission's Regulations is not just the law; it is also manifestly in the public interest."[4] Hahn and Taylor also explain the necessity of undertaking such an appraisal in a comprehensive manner and explain that without a comprehensive examination of agency programs, it would be almost impossible to quantify the real saving that have resulted from agency reviews of their existing regulatory structure.

Hahn and Taylor observe a lack of enthusiasm for the thorough spring-cleaning that the Act requires on its face, citing the absence of any guidance regarding the method and standards by which all the regulations, which are contained in five volumes of the Code of Federal Regulations and total thousands of pages, were reduced to a list of 31. "However, as an economic matter, piecemeal deregulation of the sort undertaken here has all of the inefficiencies of piecemeal *regulation* against which economists have fulminated for years."[5] They list the

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[4]Robert W. Hahn and William E. Taylor, "Economic Standards for the Biennial Review of Interstate Telecommunications Regulation," USTA Petition for Rulemaking at Attachment A, Table 4 and p. 20 (Sept. 30, 1998) [Hahn and Taylor].

[5]*Id.* at 23.

problems as follows.

First, they note that many of the Commission's rules are interconnected in complex ways. "For example, most changes cannot be made independently to the Uniform System of Accounts, the Jurisdictional Separations Procedures or the Cost Allocation Manuals..."[6] Thus, review of individual rules or even different Parts of the Rules cannot generally be undertaken in isolation.

Second, if all rules are not subject to the same scrutiny, Hahn and Taylor believe it is important to control the type of screen the Commission uses to classify rules as benign or malignant. They note, and USTA's experience confirms, it is relatively painless to identify outdated rules that are no longer applicable because the fact that the rule no longer applies means that it is unlikely to affect behavior. Unfortunately, eliminating such irrelevant or unused rules, such as Part 41 and Part 62, will not produce large welfare gains. "Of greatest concern are rules that are all too relevant — rules which currently bind firms and customers and distort their actions in telecommunications markets in ways for which the costs exceed the benefits. And, to make matters worse, these are the rules about which parties are most likely to have passionate disagreement in pursuit of self-interest."[7]

Third, Hahn and Taylor observe that it is not surprising that any agency would be reluctant to undertake a meaningful review of its own rules, particularly when those rules are the result of balancing competing and conflicting interests of many different parties.

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[6] *Id.* at 24.

[7] *Id.* at 24.

USTA is sympathetic to the challenges and time-consuming nature of the approach required by the Act. In its review of the Commission's regulations, USTA found that its organizational structure, consisting of many different committees with responsibility for discrete issues, was not conducive to a comprehensive review. USTA created an interdisciplinary task group with representatives from different areas and different-sized companies to undertake this effort. Experts were included as each Part of the rules was reviewed. USTA's petition only relates to rules which affect its core membership. For the most part, USTA did not address rules that were promulgated after the 1996 Act for the same reasons articulated by the Commission. In many instances, USTA provided a phased approach, recommending rules changes which reflected its ultimate goal to eliminate regulation to the extent feasible as well as rules changes which reflected a transition to streamline regulation and pave the way for their eventual elimination.

Hahn and Taylor offer some suggestions on how to facilitate this process. They recommend shifting the burden of proof to parties seeking to retain a rule. "Because telecommunications markets have been opened to competition — and competition has developed at different rates in different markets — it is wiser policy to rely on imperfect market forces rather than imperfect regulation to control firm behavior in circumstances when the costs or benefits of particular regulations are difficult to quantify."[8] In addition, they recommend discouraging at the margin rules that prospectively regulate behavior in favor of enforcement of rules that regulate actual behavior. Finally, they suggest oversight review by an agency such as the Office of

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[8] *Id.* at 26.

Management and Budget as a mechanism for reducing agency chauvinism.

On the specific issues upon which comment was requested, USTA recommended that the Commission revise Section 65.1(b) to make this part of the rules applicable to price cap LECs only when a LFAM adjustment is necessary. For the reasons stated by SBC, vestiges of rate of return regulation for price cap LECs, except for the LFAM, should be eliminated for those LECs. The reporting requirements should be eliminated and the rate of return calculation should be streamlined for rate of return LECs. USTA concurs with SBC and Commissioner Furtchgott-Roth that the cash working capital studies should be eliminated for price cap LECs. As SBC explains, the costs of such studies definitely outweigh the benefits, as they are extremely time-consuming and do not vary.

Regarding the detariffing of certain services, USTA proposed that the Commission's rules be amended to provide for a framework, in Part 69 for rate of return LECs, and in a new Part XX for price cap LECs, under which services would be subject to reduced regulation based upon specified competitive triggers.[9]

Regarding Part 64, USTA recommended that the rules requiring the allocation of costs between regulated and nonregulated activities be eliminated or, at the very least, streamlined to eliminate usage forecasts, the quantification of CAM changes, pre-approval requirements, the product matrix and the annual, external audit. As noted by SBC, such streamlining will reduce the detail and complexity of the current rules which serve no public interest benefits and will

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[9]In CC Docket No. 96-262, USTA recommended that special access, collocated direct trunked transport, interexchange and directory assistance services be forborne from regulation as these services were already subject to sufficient competition to meet the criteria contained in Section 10 of the Act. *See*, USTA Comments filed January 29, 1997.

significantly reduce administrative costs.

Whether as part of the biennial review process or in any other proceeding, the Commission is obligated to establish a pro-competitive, deregulatory telecommunications framework. The Commission should adopt the process as well as the substance of the SBC and USTA petitions in order to meet the requirements of Section 11, to serve the public interest and to achieve significant welfare gains.

Respectfully submitted,

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January 11, 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C.

In the Matter of	)	
	)	
United States Telephone Association	)	RM ____
Petition for Rulemaking -- 1998 Biennial	)	
Regulatory Review	)	

PETITION FOR RULEMAKING
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

USTA recommends that the Commission initiate a rulemaking proceeding to undertake a comprehensive review of all of its regulations pursuant to Section 11 of the Telecommunications Act of 1996. The Telecommunications Act required the Commission to develop a pro-competitive, de-regulatory national telecommunications policy designed to speed deployment of advanced telecommunications and information technologies and services to all Americans. Section 11 specifies that the Commission must review all regulations every two years to determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers. While the Commission has released a number of separate biennial review proceedings on specific rules, its proposals have fallen short of the Congressional mandate and have failed to provide either the comprehensive review anticipated by Congress or the standards under which such a review should be conducted.

USTA has reviewed the entire Part 47 of the Code of Federal Regulations pursuant to Section 11. USTA has developed general principles to guide the public interest analysis that Section 11 requires. USTA has provided matrices depicting the regulations which must be eliminated or modified to meet the statutory requirements as well as the specific rules language reflecting the change. USTA has also provided an economic analysis of the impact of deregulatory initiatives prepared by William E. Taylor, National Economic Research Associates and Robert W. Hahn of the American Enterprise Institute. That analysis also provides information regarding the costs and benefits of regulation as experienced in the U.S. telecommunications industry, other U.S. industries and in foreign countries.

In addition to fulfilling the statutory requirements, USTA believes that a rulemaking is required to ensure that regulations keep pace with the evolving nature of the telecommunications market. The public interest will best be served if regulation reflects technology advances, promotes consumer welfare, enhances administrative efficiency and ensures fair and efficient competition. For example, digital technology has rendered many of the rules meaningless and proposed advanced telecommunications networks are oblivious to current regulatory boundaries. Regulation which exacts such costs as higher prices, diminished product variety, slower rates of innovation and productivity growth and reduced job opportunities impedes consumer welfare. The administrative costs of complying with certain regulations must be reduced or eliminated if the regulation no longer serves a valid regulatory purpose.

Regulation should reflect the fact that competitive market forces are far superior to regulation in the determination of efficient levels of output, investment and price. Where market forces can be relied upon, the Commission should do so. In order to avoid incentives for inefficient investment, unnecessary, asymmetric regulatory obligations imposed on only one class of competitor must be eliminated, preferably when markets are first opened to competition. Consumers benefit from policies that foster overall economic efficiency, not policies that protect competitors or technologies. The Commission should promote fair competition by establishing a level playing field for all participants in which the market determines the winners and losers.

USTA recommends that the Commission examine the following factors in conducting its biennial review of regulation: the purpose of the regulation, the relevant market conditions, the economic impact of the regulation on the regulated entity and the public interest benefit in eliminating the regulation. In accordance with a pro-competitive, de-regulatory policy, the presumption should be to eliminate regulation. USTA's recommended rules for the 1998 biennial review are as follows:

Part 1: establish time limits for consideration of waivers, petitions for reconsideration and applications for review of one year to facilitate certainty.

Part 17: avoid duplicative oversight by deleting rules regarding antenna structures which are covered by the Federal Aviation Administration.

Part 32: eliminate the current accounting rules and permit carriers to move to GAAP. As a transition mechanism, permit all carriers to utilize Class B accounting, eliminate subaccounts and subsidiary records as well as jurisdictional difference accounts and streamline property records. This alone would reduce the millions of dollars an incumbent LECs must spend to comply with the outdated Part 32 rules.

Part 36: freeze all jurisdictional allocation percentages and category relationships for price cap LECs and freeze the jurisdictional allocation percentages based on a three year average for rate of return companies to facilitate competitive neutrality, administrative efficiency and to avoid jurisdictional cost shifts.

Part 41: eliminate the rules governing franks as proposed by the Commission in CC Docket No. 98-119 as these rules are outdated and no longer necessary.

Part 42: eliminate the record retention requirements as these rules are superfluous and unnecessary.

Part 43: eliminate the ARMIS reports, or at the very least streamline these reports as recommended by USTA in CC Docket No. 98-117. These reports have outlived their usefulness, pose unnecessary and costly administrative burdens and provide an advantage to competitors of incumbent LECs.

Part 61: reorganize the tariffing rules so that this section of the rules only includes tariff requirements, move the rules associated with rate of return regulation to Part 69 and create a new part to include the rules associated with price cap regulation. In addition, the tariff requirements should be streamlined to be consistent with the streamlined tariff provisions of the Telecommunications Act, including reducing the current detailed cost support requirements. Incumbent LECs should be permitted to file contract-based tariffs in order to better respond to customer requests.

Part 62: delete the rules regarding interlocking directorates as such rules are no longer necessary.

Part 63: streamline the rules requiring regulatory approval to extend lines, discontinue lines, and reduce lines. These rules add unnecessary delay in the provision of service, increase administrative costs and create uncertainty.

Part 64: eliminate the rules regarding traffic damage claims, furnishing facilities to foreign governments, the use of recording devices, furnishing enhanced services and CPE, candidates for federal office, and separate affiliates for independent, incumbent LECs. In addition, eliminate the requirement to allocate costs between regulated and nonregulated activities or, at the very least, streamline these rules to eliminate usage forecasts and eliminate quantification of CAM changes, pre-approval requirements, the product matrix and the annual, external audit. Such streamlining will reduce the detail and complexity of the current which serve no public interest benefits and significantly reduce administrative costs.

Part 65: eliminate the rate of return reporting requirements and streamline the calculation.

Part 69: revise this section of the rules so that it only includes rules pertaining to rate of return regulation. Streamline these rules to eliminate the public interest showing for new service tariff filings which only serve to delay new service offerings and streamline the access structure into four elements. Permit rate of return carriers an opportunity for pricing flexibility by establishing a zone pricing plan for the Transport, Switching and Common Line access elements as well as competitive triggers to remove services from regulation as competition develops.

Part XX: by reorganizing Parts 61 and 69, the Commission should create a new section which pertains to price cap regulation. The codified access structure and the public interest showing for new services would be eliminated. These rules would also streamline the price cap basket structure, expand zone pricing to all service categories, simplify the SLC and PICC calculations, and eliminate the CCL. Price cap LECs would be afforded pricing flexibility based on a demonstration that appropriate criteria have been satisfied, including the ability to offer volume and term discounts, contract-based tariffs, as well as promotional and optional service offerings.

These rules changes should be adopted now. These changes reflect the current telecommunications market, enhance consumer welfare, promote administrative efficiency and ensure fair and efficient competition. More important, these rules changes are necessary if the Commission is to fulfill its statutory mandate to provide a framework for a pro-competitive, de-regulatory national telecommunications policy.

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UNITED STATES TELEPHONE ASSOCIATION
PETITION FOR RULEMAKING

I. INTRODUCTION AND SUMMARY.

The Telecommunications Act of 1996 was enacted to provide for a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[1] Thus far, the Commission has concentrated its efforts on establishing the conditions to facilitate the development of competition.[2] USTA believes that it is time for the Commission to give equal attention to the

[1]Joint Explanatory Statement of the Committee of Conference at 113.

[2]For example, the Commission has completed proceedings on interconnection, open video systems, electric utility provision of telecommunications, infrastructure sharing, small business entry barriers, number portability, toll rate averaging, Bell Operating Company (BOC) entry into out-of-region interLATA markets, long distance tariff forbearance, payphone service reform, streamlined tariffs for incumbent local exchange carriers (LECs), customer proprietary network information, cost allocations for unregulated services, access reform, universal service, provision of broadband networks and streamlining the formal complaints process. The Commission has pending proceedings on universal service, access reform, Internet traffic, non-accounting safeguards and accounting safeguards for BOC provision of in-region interLATA services, eliminating Section 214 applications for extensions of lines, separations reform, service
(continued...)

implementation of the de-regulatory portion of the policy framework, for as competition continues to develop in all telecommunications markets, there is less need for many of the Commission's rules and regulations. Maintaining such rules on only one class of competitor, the incumbent LEC, is anticompetitive. Therefore, USTA urges the Commission to adopt a rulemaking proceeding, as proposed herein, to review its rules as specified in Section 11 of the Telecommunications Act of 1996.

Pursuant to Section 11, the Commission is required to review all regulations every two years to determine whether "any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[3] While, as discussed herein, the Commission has initiated many rulemakings under the heading of biennial review, these proposals fall short of the Congressional mandate and do not provide either the comprehensive review anticipated by Congress or the standards under which such a review would occur. USTA has developed general principles which it recommends to guide the Commission's "public interest" analysis and has used those principles to review all of the regulations contained in Section 47 of the Code of Federal Regulations.[4] USTA discusses the statutory requirements of the Telecommunications Act of 1996 and the need for regulatory relief.

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[2](...continued)
and equipment accessibility for persons with disabilities and Section 706 applications for the provision of broadband telecommunications networks.

[3]47 U.S.C. § 161(a)(2).

[4]USTA agrees with and has attempted to respond to the issues raised by Commissioner Furchtgott-Roth in his separate statement in *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20 and 1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements CC Docket No. 98-10, *Further Notice of Proposed Rulemaking* (rel. Jan. 30, 1998).

USTA provides a listing of the current regulations which it believes must be eliminated or modified to meet the statutory requirements of Section 11. USTA will list and explain its recommendations in Section V below and in the attached matrices. USTA also provides the new rules incorporating its proposals.

An economic analysis of the impact of deregulatory initiatives is provided in the attached affidavit prepared by William E. Taylor, National Economic Research Associates and Robert Hahn of the American Enterprise Institute. This analysis also provides information regarding the costs and benefits of regulation as experienced in the U.S. telecommunications industry, other U.S. industries and foreign countries. Among the tables provided in the analysis are several which depict the welfare gains from deregulation in the U.S. in 1990 among different industries, an estimate of the annual costs of economic regulation in the U.S. in 1988 and in 1991, and the costs of regulation and the gains from deregulation as a percentage of GDP for different countries. The analysis also discusses ways in which regulation can help or harm consumers and provides guidance on the process of regulatory reform.

II. A RULEMAKING IS NECESSARY TO ENSURE THAT CURRENT REGULATION SERVES THE PUBLIC INTEREST.

The detrimental impact of economic regulations which does not promote consumer welfare has led both Congress and the Executive Branch to continue to search for ways to reform regulation. Efforts to streamline or eliminate regulation, particularly in areas where legal impediments to entry have been eliminated have been ongoing in many industries. Progress has been made in deregulating transportation, financial services and telecommunications. For example, the Civil Aeronautics Board and the Interstate Commerce Commission were eventually eliminated after the airline and trucking industries were deregulated.[5]

The Commission should undertake an examination of its current regulations and determine if such regulations are the most efficient and effective means to serve the public interest. USTA believes that regulations should reflect technological advances, promote consumer welfare, enhance administrative efficiency and ensure fair and efficient competition. This means that regulations must be periodically reviewed and those that do not reflect the present telecommunications environment must be either modified or eliminated.

A. Regulation Must be Reviewed Periodically to Ensure that it Reflects Evolving Technology.

The dynamic changes in telecommunications technology are driving the need to reform regulation. USTA strongly agrees with Commissioner Powell that telecommunications can no longer be categorized into separate rules parts, some of which have not been changed since 1934. "Digital technology has liberated information...it is futile to attempt to preserve the balkanized regulatory framework that presently exists. Unquestionably, the dramatic evolution of technology will erode and ultimately eliminate the legal, economic and conceptual boundaries that traditionally have separated the various communications media...If regulation is necessary at all, it should be consistent with competitive markets and sufficiently flexible to accommodate unknowable future technological advances."[6] Commissioner Powell correctly explains that the

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[5]Even though the trucking industry was deregulated in the 1970's, the ICC was not eliminated until 1995. *See*, Kenneth Gordon and Paul Vasington, "The FCC's Common Carrier Bureau: An Agenda for Reform," Citizens For a Sound Economy Foundation Issue Analysis Number 62, September 1997.

[6]Remarks of Commissioner Michael K. Powell, Legg Mason Investor Workshop, Washington, D.C., March 13, 1998. [Powell].

flexibility inherent in digital technology will force traditional market barriers to disintegrate. Already, traditionally distinct technologies and services are converging and providers are offering or applying to offer integrated services.

For example, several incumbent LECs have petitioned the Commission to permit them to deploy advanced telecommunications networks.[7] These petitions fully explain that existing regulation is completely inapposite to the provision of such networks. Existing regulations, designed for the provision of voice-grade services, cannot accommodate the high-speed, broad-band services which will be provided over these networks. Such services are oblivious to LATA boundaries and jurisdictions. There is no reason to require the same unbundling and pricing restrictions on these advanced services as the Commission has imposed on traditional voice-grade services. Advanced data services are already competitive and companies such as AT&T/Teleport/TCI/British Telecom, MFS/WorldCom/MCI, Qwest and Level 3 are building broadband networks to bring voice, video and digitized information into a customer's home or office. AT&T's merger with TCI will provide AT&T with the means to offer "one stop shopping" for customers for local and interLATA telephone, cable, data and wireless services. AT&T will be able to combine its local, long distance and Internet service with TCI's cable, telecommunications and high-speed Internet services. Incumbent LECs should have an equal opportunity to attract the capital necessary to build and deploy broadband networks and to also offer advanced services to consumers.

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[7] *See*, Petitions of Bell Atlantic, U S WEST and Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26 and 98-32 and Petition of Southwestern Bell, Pacific Bell and Nevada Bell for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service.

Perpetuating traditional regulatory categories, such as the Commission's proposals in CC Docket No. 95-20 to continue to distinguish enhanced and basic services as well as to differentiate telecommunications and information services, particularly when it is done under the guise of biennial review, is counterproductive.[8] Instead of seeking to maintain such arcane and unnecessary distinctions as well as to expand their application to all incumbent LECs, the Commission should be considering whether such rules are outdated and should be eliminated.

Competitive market forces are far superior to regulation in the determination of efficient levels of output, investment and price. Thus, where market forces can be relied upon, the Commission should do so. Further, delay is costly. In order to avoid incentives for inefficient investment, unnecessary asymmetric regulatory obligations must be eliminated when markets are first fully opened to competitors. Consumers benefit from policies that foster overall economic efficiency, not policies that protect particular competitors or technologies. The Commission must focus on encouraging innovation in accordance with the objectives of the 1996 Act. As Commissioner Powell points out, an industry which is driven by technology, should have every opportunity to provide new services. Regulation which slows the pace of innovation or which confers an advantage on a technology or service must be avoided and all participants should be encouraged to invest in the infrastructure. Given that regulation cannot keep pace with the technological change occurring in the telecommunications industry, greater reliance on competition is the only way the Commission can ensure that it is not standing in the way of

[8]In the Matter of Computer III Further Remand Proceedings, Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, *Further Notice of Proposed Rulemaking*, (rel. Jan. 30, 1998).

innovation.

B. Regulation Must be Reviewed Periodically to Ensure that it Will Enhance Consumer Welfare.

The voluminous regulations contained in Section 47 of the Code of Federal Regulations produce too few benefits at excessive costs; costs which are often hidden from the public. Such costs show up indirectly in the form of higher prices, diminished product variety, lower rates of innovation and productivity growth and reduced job opportunities.[9] Estimates of the potential welfare gains to society from deregulating telecommunications -- and actual experience in other industries -- highlight what is at stake before the Commission. Taylor and Hahn, in the attached affidavit, provide many examples of the overall gains for the economy both within the United States and in other countries from economic deregulation. A couple of examples from the telecommunications industry are also provided below.

Under current regulation, incumbent LECs must request permission from the Commission in order to introduce a new interstate service. Of course, competitors of incumbent LECs have an incentive to stop or delay the introduction of the new service in order to enhance their competitive advantage. Thus, while the Commission reviews the request and considers the competing claims, the new service is delayed and consumers are denied the opportunity to purchase the new service from an incumbent LEC. The introduction of new telecommunications services can lead to very large gains in consumer welfare. Dr. Jerry Hausman estimated that the gain in consumer welfare from the introduction of voice messaging services amounted to $1.27 billion per year and that the introduction of cellular telephone service has led to an estimated gain

[9]"Modernizing Government Regulation: The Need for Action," Policy Statement by the Research and Policy Committee of the Committee for Economic Development 1998.

in consumer welfare of about $50 billion per year.[10]

The delay in the availability of voice messaging services provides a startling example of the magnitude of the loss in consumer welfare resulting from regulatory delay. Voice messaging services were first proposed by AT&T in the 1970's. The Commission delayed its decision and then refused to allow the BOCs to offer these services on an integrated basis with other services. In 1986, the Commission reversed its decision, but the BOCs were forbidden by the Modification of Final Judgment from offering these services. Finally, more than ten years after information services were first introduced, in 1988, the BOCs were permitted to offer information services. The BOCs began providing voice messaging services in 1989. The ten year regulatory delay cost consumers well over $10 billion.

Dr. Hausman has also estimated what would have been the outcome if the Commission had required that cellular prices be set at Total Service Long Run Incremental Cost (TSLRIC).[11] "If cellular carriers had been required to sell their services to competitors (resellers) at a TSLRIC cost-based price, it is unlikely that they would have risked the billions of dollars of investment in cellular networks when the future of cellular was highly uncertain and many industry analysts did not forecast much success for cellular. The consumer welfare gains that have been derived from the success of cellular telephone service would not have existed; indeed a TSLRIC based rule

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[10]Jerry A. Hausman, "Valuing the Effect of Regulation on New Services in Telecommunications," Brookings Papers on Economic Activity, 1997. [Hausman].

[11]The Commission ultimately adopted TSLRIC to determine the price incumbent LECs must charge for unbundled network elements.

would likely have led to tens of billions of dollars of lost consumer welfare."[12] The TSLRIC approach to pricing creates significant negative economic incentives to invest in new services or new infrastructure by any participant.[13]

Finally, Dr. Hausman notes that losses in consumer welfare cannot be regained in subsequent periods. "Regulation, as currently implemented, may well be unable to keep up with the fast-paced changes in telecommunications technology. Consumer welfare losses are likely to be quite large because of regulatory delays and pricing distortions. Past welfare losses have been in the billions of dollars per year, and the FCC's current approach may well lead to comparable consumer welfare losses in the future."[14]

In a 1996 study, Crandall and Waverman estimated that the net gains from telecommunications deregulation that lead to more efficient pricing is almost $30 billion.[15] One example of current inefficient pricing is the geographic averaging of access rates, which causes prices in some areas to exceed economic costs and prices in other areas to be below economic costs. According to Schmalensee and Taylor, such pricing creates two different types

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[12]Hausman at 10.

[13]*See*, also, Statement of Alfred E. Kahn on FCC's Proposed Reforms of Carrier Access Charges, USTA Reply Comments, CC Docket No. 96-262, February 14, 1997 at Attachment 1 and USTA Comments, CCB/CPD 98-12, March 18, 1998 at Attachment 1. Professor Kahn explains that a prescriptive approach to price interstate access is "not confined to its effect on the incentives of both incumbent and competitive LECs to invest in the modernization of our telecommunications infrastructure. Even more directly and obviously, it would inevitably impair drastically the ability of the incumbents to do so."

[14]Hausman at 16.

[15]Robert W. Crandall and Leonard Waverman, *Talk is Cheap: The Promise of Regulatory Reform in North American Telecommunications*, The Brookings Institution (1996).

of inefficiencies: inefficient utilization of telecommunications resources and distorted competitive incentives.[16]

Crandall and Furchtgott-Roth, in a study of the cable television industry found that consumers were $6.5 billion a year better off after deregulation in 1992 than in 1983 and 1984 before deregulation.[17] Clifford Winston analyzed the welfare effects of deregulation in airlines, railroads and trucking and found a total of between $36 and $46 billion in net welfare gains from deregulation.[18]

Clearly, considering the consumer welfare benefits of deregulation and attempting to maximize those benefits should guide the Commission's efforts to establish a de-regulatory telecommunications policy by eliminating current regulations which inhibit consumer welfare benefits. As stated by Commissioner Powell, "...deregulation is a critical pre-condition to competitive conditions because it removes government interference between consumers and producers."[19] Even in cases where regulation is required, the Commission should seek to maximize consumer welfare benefits by ensuring that the costs of the regulation do not outweigh

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[16]Richard Schmalensee and William Taylor, "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments: A Primer," USTA Comments, RM No. 9210, at Attachment. [Schmalensee and Taylor].

[17]Robert W. Crandall and Harold Furchtgott-Roth, *Cable TV: Regulation or Competition?* The Brookings Institution (1996).

[18]Clifford Winston, "Economic Deregulation: Days of Reckoning for Microeconomists," *Journal of Economic Literature*, Vol. XXXI (Sept. 1993) at 1263-1289.

[19]Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, WT Docket No. 98-100, FCC 98-134 (rel. July 2, 1998). Separate Statement of Commissioner Michael Powell Dissenting in Part.

the benefits. Certainly the Telecommunications Act of 1996 provides the Commission with the authority to accomplish both since the Act contemplates that in the long term, competition rather than regulation should be relied upon.

C. Regulation Must be Reviewed Periodically to Ensure that it Promotes Administrative Efficiency.

The Commission should also focus on administrative efficiency. As Commissioner Powell noted, timely decision-making, sensitivity to the business decisions of individual companies and shifting resources to enforcement from prescriptive regulation will enhance regulatory efficiency. In recent filings incumbent LECs have estimated the costs of complying with certain regulations. For example, Bell Atlantic notes that it spends more that $8 million per year to maintain continuing property records as specified in Part 32 and over $9 million per year to comply with current Part 64 requirements.[20] GTE has stated that up to 25 percent of its total general ledger system implementation costs were solely attributable to customizing its internal systems to meet the Part 32 requirements.[21]

The administrative burden and expense of completing and filing the Automated Reporting Management Information System (ARMIS) reports provides another example of an unnecessary and unjustified administrative burden. On an annual basis, Ameritech estimates that it must spend approximately 26.665 hours. Bell Atlantic estimates 7, 710 hours, Cincinnati Bell estimates 4.100 hours (Cincinnati Bell does not file the ARMIS 43-06), SBC estimates 25,000

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[20]Comments of Bell Atlantic. 1998 Biennial Regulatory Review--Review of Accounting and Cost Allocation Requirements. United States Telephone Association Petition for Rulemaking. CC Docket No. 98-81. ASD File No. 98-64. filed July 17, 1998 at 5,9.

[21]Comments of GTE. CC Docket No. 98-81, filed July 17, 1998 at 6.

hours and U S WEST estimates 6,900 hours to complete and file the ARMIS reports. This does not include the time and resources expended to respond to Commission requests to refile prior year reports. Continuing to impose such administrative burdens on one class of competitor will not promote fair and efficient competition. Compliance with unnecessary administrative burdens forces incumbent LECs to utilize resources which could be directed toward providing service to customers.

D. Regulation Must Be Reviewed Periodically to Ensure that it Promotes Competition, Not Competitors.

USTA strongly agrees with Commissioner Powell that the Commission should neither shield incumbents nor new entrants from the competitive marketplace through regulation. USTA has consistently urged the Commission not to adopt asymmetric regulatory requirements which apply only to incumbent LECs, but to establish a level playing field for all participants and to let the market determine the winners and losers. By speculating as to every possible negative outcome and micro managing incumbent firms to attempt to prevent any such possible negative outcome, the Commission handicaps the market, limits competition and reduces consumer benefits.

Instead of stifling the efforts of incumbents to compete by arbitrarily restricting their business operations. the Commission should shift its focus to enforcing regulations which are necessary to implement the Telecommunications Act of 1996. "Rather than imagining all the dangers that might result if we let a company do what it has asked and then take equally speculative action to meet those speculative dangers, lets instead police conduct and make decisions based on real facts. If there are "teeth" in our enforcement efforts, companies will take heed or pay the price."[22] Conversely, the Commission need not protect incumbents from the presence of new entrants.

USTA fully anticipates that AT&T, MCI and other competitors of incumbent LECs will continue to oppose efforts to relieve incumbent LECs from asymmetrical regulatory constraints since restrictions on incumbent LECs add costs which these competitors do not bear, provide valuable information which these competitors do not divulge and serve to delay incumbent LEC market responses. These factors give the competitors of incumbent LECs an advantage in the marketplace. USTA would remind the Commission that AT&T itself eloquently articulated the problems of this type of asymmetrical regulation:

> The social costs of asymmetric regulation of AT&T's provision of telecommunications services include all the direct, administrative costs of that regulation borne by AT&T, the Commission, AT&T's rivals, and other parties. AT&T bears a differential burden here because it must comply with regulatory requirements from which its rivals have been largely exempted. Moreover, as competition becomes more vigorous and the marketplace more dynamic, AT&T will need to change prices and products more frequently in order to remain competitive. Under the current policy of asymmetric regulation, this will result in more frequent filings with the Commission, and AT&T's differential burden will become more severe.
>
> While the administrative costs of asymmetric regulation are substantial and will grow rapidly as competition intensifies, the most important costs imposed on AT&T and on society as a whole by the current regulatory policy in telecommunications services are not administrative. More important, though perhaps less visible, are the indirect costs that arise from the handicaps and perverse incentives inevitably created by conventional regulation in the presence of competition...
>
> The many differential regulatory burdens discussed above prevent AT&T from using all its substantial assets, both human and tangible, effectively in the competitive arena to meet customer needs. Regulation inevitably reduces incentives to produce efficiently and to innovate vigorously. It does this directly by limiting the allowed returns from efficiency and innovation and indirectly by imposing delays and rigidities that reduce possible returns. Regulation-induced distortions in pricing

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[22]Powell.

distort carrier-specific and market-wide demand patterns and thus distort the utilization of existing capacity. While pricing distortions may benefit some competitors and users, society as a whole loses. Society also loses if AT&T's incentives to deliver services at minimum cost are dulled, so that its costs are higher than they should be.[23]

In a recent article, Alfred E. Kahn discusses the dangers of attempting to micro manage the entry and survival of some competitors by extending to them special regulatory preferences and/or restraining efficient competitive responses by the incumbents.[24] Dr. Kahn lists the factors which should be considered when such regulation is proposed:

--the costs to competition and the inefficiencies that society incurs when supply is not distributed on the basis of the present marginal costs of competitors;

--the encouragement that preferential protections give to competitors to devote their entrepreneurial energies to seeking such protections and ensuring their continuation;

--the preferability of leaving determinations of the long term prospects of new ventures to the market, generally and to financial markets, in particular;

--the need for a hard-headed determination of whether the would-be competitor is indeed a struggling, inexperienced newcomer that both requires and deserves some special preference;

--the lesson of history that, so long as companies are insulated from competition, they are less likely to ever "grow up"; and

--the desirability of putting a strict limit on both the period and extent of the protection.[25]

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[23]Long Run Regulation of AT&T's Basic Domestic Interstate Services, CC Docket No. 83-1147, Comments of AT&T, Attachment 4.

[24]Alfred E. Kahn, "Letting Go: Deregulating the Process of Deregulation, or: *Temptation of the Kleptocrats and the Political Economy of Regulatory Disingenousness*, MSU Public Utilities Papers, 1998 at 16. [Kahn].

[25]*Id.* at 20-22.

Dr. Kahn also debunks the oft repeated claim that incumbents enjoy competitive advantages that must be offset or denied if competition is to thrive. He explains that what

> is clearly *not* justified is the contention that rivals of the ILECs or electric utilities require some special protections or preferences merely because the incumbent companies are in a position to exploit economies that are not available to their challengers...competitive advantages arising out of economies of scale and scope are precisely the kind of efficiency advantages that we expect and *want* to prevail under competition. Integration is fundamentally a *competitive* phenomenon, and such efficiency advantages as it confers on the integrated firms are socially beneficent. The first fundamental competitive principle of freedom of entry means, first and foremost under conditions of real-world competition, freedom of existing firms to integrate into other operations or markets that they think they have special qualifications to serve.[26]

As Dr. Kahn explains, economies of scope and scale permit any provider to supply a number of products and services in combination at lower costs than if it provided them separately.

> If such economies are present, proposals for structural separation of the services using those common facilities--and recommendations of witnesses for competitors and proposed commission rules that all such common uses or personnel be prohibited except as the services (or other inputs) can be transferred at published tariffs and, therefore, made equally available to all applicants--would simply interfere with or totally prevent their achievement. The non-utility operation would have to employ its own trucks and personnel, its own bills and its own computers. All purchasers of its services would be hurt by such mandated separations, preventing the utility companies from taking advantage of such potential economies and passing them on, under pressure of competition--including purchasers of the regulated services, who would lose the possible benefit of sharing those services with unregulated operations."

Dr. Kahn notes that the most extreme of the protections provided to competitors of incumbent LECs have been the line of business restrictions on the RBOCs, the tariffing requirements and the mandated averaging of costs and prices. The flat prohibition of the line of business restrictions, which prevent the companies in the best position to compete vigorously from

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[26] *Id.* at 23 [footnotes omitted].

competing at all, are inherently anti-competitive. The tariffing requirements give competitors advance notice of services and prices and a legal opportunity to delay new services by opposing the tariff meanwhile preparing their own market responses. The averaging of costs and prices permits competitive undercutting in low-cost markets while incumbents are still required to serve high cost markets at non-compensatory rates. "Whatever one's evaluation of these asymmetrical restraints upon the competitive initiatives and responses of the incumbent companies, there can be no doubt that in essential respects they go beyond the mere preservation of competition in the direction of protecting *competitors from* competition--effectively imposing regimes of cartelization on potentially competitive markets."[27]

III. THE TELECOMMUNICATIONS ACT OF 1996 AMENDED THE COMMUNICATIONS ACT OF 1934 TO REQUIRE DEREGULATION AND REGULATORY REFORM.

The statutory requirement that the Commission develop a new pro-competitive, de-regulatory national telecommunications policy provides the Commission with the necessary incentive to review all of its rules promulgated before 1996 to ensure that the rules are consistent with that policy and in no way act to impede the development of that policy. Specifically, the Telecommunications Act of 1996 amended the Communications Act of 1934 to require regulatory reform through the addition of two new sections. Section 10 requires the Commission to forbear from applying a provision of the Communications Act or from applying any of its regulations to a telecommunications carrier or a telecommunications service if the Commission determines that enforcement is not necessary to ensure that charges, practices, classifications or regulations for such carrier or services are just and reasonable and not unjustly or unreasonably

[27] *Id.* at 39.

discriminatory, to protect consumers and to protect the public interest. In making its public interest determination the Commission shall consider whether or not forbearance will promote competition. Carriers are permitted to petition for forbearance and these petitions shall be deemed granted if the Commission does not deny such petitions within one year. USTA agrees with Commissioner Powell's interpretation of the statutory language that the presumption is in favor of forbearance.[28] In addition, Section 10 provides that a state may not continue to apply or enforce any provision of the Communications Act that the Commission has forborne.

Section 11 requires the Commission, beginning in 1998 and in every even numbered year thereafter, to review all regulations issued under the Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service. The Commission is required to determine whether such regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of such service. If so, the Commission must repeal or modify any such regulation.

The legislative history of Section 11 clearly shows that this section was intended to require the Commission to perform a complete review of all of its rules and regulations every two years. As stated in the Senate debate. Section 11 "establishes a process that will require

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[28]Separate Statement of Commissioner Michael Powell, Dissenting in Part, Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, WT Docket No. 98-100. *Memorandum Opinion and Order*, FCC 98-134 (rel. July 2, 1998) "I am increasingly concerned that we are setting up a misguided framework for addressing competition and deregulation questions that will perpetuate regulation, institutionalize government intrusion in markets. and inhibit the full blossoming of competition all in direct contravention to Congress' wishes. Such a framework will go a long way in securing regulators a leading role in telecommunications markets, but will do little to promote the robust, high quality competition that Congress envisioned and from which consumers will really benefit."

continuing justification for rules and regulations each two years. Every two years, in other words, all rules and regulations will be on the table. If they don't make sense, there is a process established to terminate them."[29] Section 11 is also characterized as establishing a process "for continuing attic-to-basement review of all regulations on a two year cycle."[30] It is clear that Congress intended the Commission to review all of its rules every two years and eliminate those which no longer make sense as part of its pro-competitive, de-regulatory telecommunications policy.

The Telecommunications Act also contains provisions which provide the Commission with authority to promulgate rules. For example, Section 254(k) states that the Commission, with respect to interstate services, shall establish any necessary cost allocation rules, accounting safeguards and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. The Commission also has the authority to ensure that rates for interstate services are just, reasonable and non-discriminatory. The exercise of such authority does not mean, however, that the Commission should not undertake to review its rules to ensure that the methods it employs are consistent with the overall pro-competitive, de-regulatory national policy. In addition, it does not require the Commission to micromanage the business operations of incumbent LECs.

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[29] 141 Cong. Rec. S7881, June 7, 1995.

[30] *Id.*

IV. SPECIFIC PRINCIPLES SHOULD GUIDE COMMISSION REVIEW OF ITS RULES.

The 1996 Act certainly contemplates that as markets are opened to increased competition, the public interest may no longer be served by the continuation of Commission regulations. However, Section 11 does not include specific guidelines. As the Commission continues its work implementing the pro-competitive, de-regulatory policy to shepherd the telecommunications industry into the new millennium, there are specific principles which should guide its review of current rules as well as its consideration of future rules. These principles must reflect a change in focus for the Commission. As required by the Act, the Commission should look first to competition to control prices and ensure service quality. Second, duplicating the oversight or jurisdiction of other government agencies should be avoided. At the federal level, for example, the Commission need not be involved in antitrust issues or advertising and fair trade practices which are the province of the Department of Justice and the Federal Trade Commission respectively. The Telecommunications Act of 1996 did not alter the Federal/State regulatory scheme. In many cases, the Act specifies the responsibilities of each. Duplicative government oversight adds to the costs of regulatory compliance and creates delay and uncertainty.

Third, every proposed regulation should be subject to a cost/benefit analysis to ensure that the costs of the regulation do not outweigh the benefits. The Commission should analyze any proposal to identify the costs of compliance and to determine who ultimately pays the costs. For example, the Unfunded Mandates Reform Act of 1995, which requires federal agencies to prepare written assessments of the costs and benefits of significant regulatory actions that may result in the expenditure by state and local governments or the private sector of at least $100 million annually, requires that an agency consider a reasonable number of regulatory alternatives and select the least costly, most cost-effective or least burdensome alternative that achieves the rule's objective. Despite the fact that independent agencies like the Commission were exempted from that law, such review should be employed by the Commission.

USTA developed the following criteria in an effort to reflect the new focus discussed above. USTA recommends that the Commission consider these criteria as it reviews each of its rules:

1. *The purpose of the regulation.* USTA agrees with Commissioner Furchtgott-Roth that the Commission should examine the original purpose for the regulation and how the regulation furthers that purpose in order to determine if the reason for the regulation remains valid. Further, the Commission must assess each regulation in relation to the Telecommunications Act of 1996 to ensure that the regulation relates to and furthers the implementation of the pro-competitive, de-regulatory national telecommunications policy. If the purpose of the regulation is no longer relevant or if the regulation does not relate to the Act, the regulation should be eliminated or modified.

2. *The relevant market conditions.* The Commission should also examine the conditions in the relevant market when the regulation was promulgated and compare its findings to conditions in the relevant market in 1998 in order to determine if meaningful economic competition will be furthered by the regulation. For example, the Commission should consider whether the relevant market is open to competition or if statutory or other regulatory barriers to entry exist. The Commission should consider whether new entrants are bound by similar

restrictions. Further, as Commissioner Furtchgott-Roth suggested, the Commission should assess whether changes in the interstate market affect the purpose of the regulation. If market conditions have changed, the regulation should be modified to reflect current market conditions or eliminated if the market obviates the need for the regulation.

3. *The economic impacts of the regulation on the regulated entity.* USTA recommends that the Commission undertake a cost/benefit analysis of each regulation to ensure that the costs do not outweigh the benefits. The benefits and costs should be quantified when possible. If the costs of regulation outweigh the benefits, the regulation should be modified or eliminated.

4. *The public interest benefit in eliminating the regulation.* As noted above, the purpose of the Telecommunications Act of 1996 is to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies. USTA believes that the statute requires the Commission to implement a national telecommunications policy which facilitates competition, seeks to deregulate currently regulated entities and to speed delivery of advanced telecommunications services to all consumers. Thus, regulations which inhibit the ability of carriers to invest in the telecommunications infrastructure and to provide new services to consumers must be eliminated.

USTA has used these criteria to examine all of the rules and regulations applicable to wireline, incumbent LECs and, as explained below, recommends the elimination or modification of certain rules. In its examination of the rules, USTA found many which were promulgated at a time when local and long distance services were provided by one company. Some of the current rules, holdovers from rate of return regulation, fail to reflect the fact that some of the largest incumbent LECs are subject to price cap regulation. Many of the rules impose reporting and record keeping requirements which do not make sense given that there are no barriers to entry in the markets where incumbent LECs traditionally have provided service. USTA's compilation of the regulations which meet the Section 11 standard are explained below.

V. CURRENT REGULATIONS WHICH MUST BE ELIMINATED OR MODIFIED PURSUANT TO SECTION 11 OF THE TELECOMMUNICATIONS ACT OF 1996.

The Telecommunications Act of 1996 was implemented to replace regulation with competition and marketplace forces. Section 11 requires the Commission to review all of its rules in furtherance of the pro-competitive, de-regulatory policy. USTA has examined all of the regulations in Volume 47 of the Code of Federal Regulations. As will be explained below, USTA recommends that the Commission take the following action.

Part 0 - COMMISSION ORGANIZATION.

USTA is not recommending any changes to the rules contained in Part 0 at this time. However, USTA expects that in transitioning to a competitive-based approach, the Commission will be able to streamline its organization accordingly. Further, once the transition is complete and the requirements that will permit competitive markets to develop are established, the Commission should eliminate and/or reduce its regulatory functions.

Part 1 - PRACTICE AND PROCEDURE.

While the Commission has been working hard to meet the deadlines imposed by the Telecommunications Act of 1996, some of the current procedures do not set specific deadlines for Commission action. This has created a logjam of unresolved issues before the Commission in the form of petitions for reconsideration and waivers of the Commission's rules. As a result, incumbent LEC provision of new services may be delayed indefinitely and issues arising from Commission orders may remain unresolved.[31] To the extent that such regulations are necessary, USTA urges the Commission to implement time limits to provide certainty and to ensure resolution of issues. Therefore, USTA recommends limiting the time in which the Commission may consider waiver requests, petitions for reconsideration and applications for review to one year. Under USTA's proposed rules change, if such filings are not denied within one year, they shall be deemed granted.

Using the proposed criteria, USTA believes that establishing deadlines for Commission action is consistent with the purpose of the rule, but will serve the public interest by providing certainty regarding Commission action and reducing regulatory delay.

PART 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS.

USTA does not recommend any changes in Part 2 at this time; however, USTA will continue to review these rules pursuant to the Commission's recent Notice of Proposed Rulemaking in GEN Docket No. 98-68.[32]

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[31] There are over forty petitions for reconsideration of the Local Competition Order adopted in 1996 still pending at the Commission.

[32] 1998 Biennial Regulatory Review -- Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, *Notice of Proposed* Rulemaking, GEN Docket No. 98-68, FCC 98-92 (rel. May 18, 1998).

PART 3 - AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES.

USTA recommends no changes to Part 3.

PART 5 - EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST).

USTA recommends no changes to Part 5.

PART 11 - EMERGENCY ALERT SYSTEM (EAS).

USTA recommends no changes to the Part 11 rules.

PART 13 - COMMERCIAL RADIO OPERATORS.

USTA recommends no changes to Part 13.

PART 15 - RADIO FREQUENCY DEVICES.

USTA recommends no changes to the Part 15 rules.

PART 17 - CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES.

In order to avoid unnecessary duplication, USTA proposes deleting a number of the rules contained in Part 17. While these rules are important to public safety, they duplicate rules promulgated by the Federal Aviation Administration (FAA) which also has jurisdiction over this issue. USTA recommends that the FAA maintain its jurisdiction. As depicted in the attached matrix, USTA proposes to eliminate Sections 17.7, 17.14, 17.21, 17.22, 17.23, 17.45, 17.46, 17.47, 17.48, 17.49, 17.50, 17.51, 17.53, 17.54, 17.55, 17.56 as these rules duplicate Part 77 of the FAA's rules. USTA also recommends deleting Sections 17.24 through 17.43 and 17.52 which were reserved and modifying Section 17.17 to delete the reference to Section 17.23.

Title III of the Communications Act of 1934 vests authority in the Commission to require the painting and/or illumination of antenna structures if such structures constitute or could constitute a menace to air navigation. While the purpose of the regulations serve a valid public interest, the standards are referenced from FAA Advisory Circulars, AC 70/7460-1H and AC 150/5345-43D. USTA believes that such duplication is unnecessary and that the rules pertaining to the specifications for painting, lighting, cleaning and maintenance of antenna structures which are also covered by the FAA Advisory Circulars should be eliminated. In addition, carriers must provide information on FCC Form 854 regarding antenna structures requiring notification to the FAA and structures which are exempt from such notification. Therefore, USTA proposes to eliminate the rules relative to such structures.

USTA recommends retaining rules relating to antenna farms, as well as Section 17.8, 17.9 and 17.10, because these rules are referenced in the FAA rules.

PART 18 - INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT.

USTA recommends no changes in Part 18 at this time.

PART 19 - EMPLOYEE RESPONSIBILITIES AND CONDUCT.

USTA's review focused on rules applicable to incumbent local telephone companies; therefore USTA recommends no changes in Part 19.

PART 20 - COMMERCIAL MOBILE RADIO SERVICES.

USTA recommends no changes in Part 20.

PART 21 - DOMESTIC PUBLIC FIXED RADIO SERVICES.

USTA recommends no changes in Part 21.

PART 22 - PUBLIC MOBILE SERVICES.

USTA recommends no changes in Part 22.

PART 23 - INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES.

USTA recommends no changes in Part 23.

PART 24 - PERSONAL COMMUNICATIONS SERVICES.

USTA recommends no changes in Part 24.

PART 25 - SATELLITE COMMUNICATIONS.

USTA recommends no changes in Part 25.

PART 26 - GENERAL WIRELESS COMMUNICATIONS SERVICE.

USTA recommends no changes in Part 26.

PART 27 - WIRELESS COMMUNICATIONS SERVICE.

USTA recommends no changes in Part 27.

PART 32 - UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES.

While Section 220(a)(2) requires that the Commission prescribe a uniform system of accounts for use by telephone companies, the Act does not require the Commission to mandate the specific accounts and records to be kept. Therefore, USTA urges the Commission to set a firm date by which to complete the conversion to Generally Accepted Accounting Principles (GAAP) and permit carriers which already rely on GAAP for financial purposes to utilize GAAP for regulatory purposes. This is the only way the Commission can ensure that incumbent LECs are relieved from onerous accounting regulations and are permitted to utilize accounting procedures employed by other businesses.

In a pro-competitive, de-regulatory environment, the burdensome and costly accounting requirements imposed on incumbent LECs must be eliminated or significantly reduced. Other telecommunications providers are not subject to these same requirements and can establish accounting systems and processes to meet their business needs. Incumbent LECs should not be forced to bear the burden of maintaining a Commission-mandated set of accounts, but should be able to adopt accounts, methods and processes that meet professional accounting standards. Permitting incumbent LECs to utilize GAAP accounting will afford them the same flexibility to maintain records consistent with their business needs. Such records could still be available for whatever monitoring the Commission can demonstrate is required. The Commission can effectively monitor all telecommunications companies by reviewing data which is reported to the financial community and by bench marking incumbent LEC results against those of other companies.

In fact, companies that follow GAAP accounting are also required to adhere to internal controls as prescribed by the Foreign Corrupt Practices Act of 1997, the Securities and Exchange Commission and the Internal Revenue Service. The American Institute of Certified Public Accountants Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit" also provides effective internal controls. A company's compliance with these internal control standards is evaluated annually by independent auditors as part of the field work done prior to the auditor's opinion on the company's financial statements. A company's annual financial statement also includes a Report of Management. This report acknowledges management's responsibility for internal control and attests to the existence of a strong control structure which provides reasonable assurance that assets are safeguarded from unauthorized use or disposition, that transactions are properly recorded and executed and that the financial records permit the preparation of reliable financial statements.

Competition and price cap regulation certainly provide effective constraints on the ability of incumbent LECs to cross subsidize.[33] There are also other safeguards which make the current Part 32 rules redundant and overly burdensome. These safeguards include financial and other reporting as well as internal and external audits and internal controls as noted above, ongoing tariff review at both the state and Federal level, federal and state complaint and enforcement procedures, activities of other agencies such as the Federal Trade Commission, SEC, Financial Accounting Standards Board, Department of Justice, state attorneys general and Federal and state statutes, including the Telecommunications Act of 1996 and antitrust laws. The current Part 32 rules are superfluous and only serve to further tilt the competitive advantage in favor of competitors who are free to enter and provide service without the Commission's restrictions.

The current Part 32 rules became effective on January 1, 1988. Ten years later, it is clear that the Part 32 rules no longer reflect current business operations of the incumbent LECs. In a recent report, the accounting firm of Arthur Andersen analyzed the Part 32 rules and found that the rules no longer accomplish their stated objectives. As explained by Arthur Andersen:

> Management no longer utilizes USOA [Uniform System of Accounts or Part 32] results to manage the business--in particular, the expenses as categorized under Part 32 do not present a clear picture of activities performed to produce a product or service. Thus, companies have designed management information systems

[33]Price cap regulation breaks the link between costs and rates. Once the rates for price capped services are established, prices are regulated by the price cap formula, not by the allocation of costs. Since prices are capped, changes in cost allocation do not affect prices. Thus, price cap carriers may charge the capped price whether or not its costs for the regulated service change. Under price cap regulation, the risk of cross subsidization is virtually non-existent.

> that focus on activity-based cost information (e.g., salaries and wages, by activity or service, versus buried cable expenses). The financial community for the most part no longer uses the financial results derived pursuant to Part 32... In light of the tremendous changes in the industry since its adoption in 1988, in many respects the USOA's stability has rendered it obsolete as an accounting system intended to reflect the current results of operations of subject carriers in a consistent and relevant manner.[34]

The Commission has authority under specific provisions of the Act to prevent cross subsidization and in Section 254(k) shall establish *any necessary* cost allocation rules, accounting safeguards and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. However, the Act does not require the maintenance of the current Part 32 rules.

In CC Docket No. 98-81, USTA urged the Commission to permit incumbent LECs to adopt GAAP.[35] USTA also recommended the following rules changes which would facilitate the move to GAAP. These changes are included in the attached matrix and reflected in the attached rules.

1). Consolidate from Class A to Class B accounting and eliminate subaccounts and subsidiary records as well as jurisdictional difference accounts. Class B accounting is already used by small and, if adopted as proposed by the Commission in CC Docket No. 98-81, will be used by mid-sized incumbent LECs.[36] Class A accounting is not required for the Commission to

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[34]Ex Parte Filing of Arthur Andersen LLP, *Accounting Simplification in the Telecommunications* Industry, CC Docket No. 98-81, July 15, 1998 at 2.

[35]1998 Biennial Regulatory Review--Review of Accounting and Cost Allocation Requirements, United States Telephone Association Petition for Rulemaking, CC Docket No. 98-81, ASD File No. 98-64, FCC 98-108, USTA Comments filed July 17, 1998.

[36]Despite the fact that the Class A accounts were established at a time when all LECs operated under traditional cost of service regulation, the Commission is now proposing to apply (continued...)

meet any of its statutory obligations in the Act because of all of the other safeguards listed above. The Commission's separations rules are based on Class B accounts. In addition, incumbent LECs should not be forced into maintaining subaccounts or subsidiary records that do not serve a business purpose. Further, since Jurisdictional Difference Accounts do not contain Part 32 accounting dollars, these accounts should be eliminated. By adopting Class B accounting, the Commission can reduce the number of accounts from 261 to 109, the number of subaccounts from 12 to five and eliminate all of the 179 subsidiary records. These reductions, in turn, will allow incumbent LECs to reduce the administrative, financial and operational processes and systems that are required to implement the Part 32 requirements and provide them the same flexibility their competitors enjoy. The competitors of the incumbent LECs of course are not subject to the Part 32 requirements and are able to utilize GAAP accounting.

2). Streamline Property Records and Depreciation as defined in Section 32.2000. USTA recommends that the Commission replace the detailed instructions for Telecommunications Plant accounts with broader policy requirements. This level of detail is not necessary. Incumbent LECs should not be required to incur the costs to keep details which are not required for business purposes. Specifically, USTA urged the Commission to eliminate the detailed "how to" descriptions for each account; eliminate the requirement to file retirement unit lists and to rely instead on GAAP depreciation and retirement standards; allow incumbent LECs to determine when vintage level data is required; allow incumbent LECs to determine the applicable depreciation rate for each account based upon GAAP standards; eliminate 32.2000(g)(4) and (5); allow the use of GAAP internal controls and permit incumbent LECs to establish expense limits.

3). Eliminate the expense matrix as well as other mandated subsidiary records.

4). Eliminate the preliminary notification requirements in Part 32 and permit incumbent LECs to adopt new accounting standards concurrent with FASB. This would relieve incumbent LECs from being forced to maintain multiple sets of books to record differences between GAAP and Part 32.[37] For example, by eliminating Section 32.25 and permitting carriers to recognize extraordinary items, prior period adjustments and contingencies in conformance with GAAP without filing for Commission approval, the Commission can avoid duplication with the material items already disclosed in the Form 10-K and other financial reports.

5). Eliminate Section 32.26 and replace it with the GAAP standard for materiality as contained in the Statement of Financial Accounting Concept No. 2.

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[36](...continued)
these outdated accounting requirements to only those incumbent LECs under price cap regulation. Such a proposal makes no sense.

[37]USTA proposes to eliminate notification requirements in Section 32.2(f), 32.13, 32.13(a)(3), 32.16, 32.25, 32.26, 32.1220(h), 32.2002(b), 32.2311(f), 32.1437, 32.4340, and 32.4361.

6). Replace the annual inventories with the GAAP requirements for periodic inventories.

7). Eliminate the Jurisdictional Difference Accounts since these accounts do not include Part 32 amounts.

8). Consolidate the tax accounts.

Adopting USTA's recommendations listed above would provide the first step necessary to move to GAAP accounting. However, the Commission should establish a date certain by which all incumbent LECs would be permitted to utilize GAAP accounting.

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES.

As noted above, the Commission has initiated a proceeding to examine the jurisdictional separations of costs.[38] As USTA noted in its comments filed in that proceeding, the jurisdictional separations of costs is required so long as incumbent LECs remain subject to Federal and state rate regulation. In fact, the Telecommunications Act of 1996 preserved the dual regulatory scheme whereby the Commission has authority to regulate interstate services and the state commissions have the authority to regulate intrastate services.[39] The primary purpose of jurisdictional separations is to assign costs to the appropriate jurisdiction wherein the company is permitted a meaningful opportunity to recover all prudently incurred costs.

However, maintenance of jurisdictional separations does not mean that the current complicated and burdensome separations rules could not be simplified. The current process is a

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[38]Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, *Notice of Proposed Rulemaking,* CC Docket No. 80-286, FCC 97-354 (rel. Oct. 7, 1997).

[39]Section 1 and 2.

complex process and requires detailed studies of incumbent LECs' regulated costs. Despite the numerous studies, the jurisdictional allocation process often results from public policy decisions which traditionally were aimed at preserving universal service. USTA recommends that the separations rules can be simplified by freezing the jurisdictional allocations and categorization factors. This would provide for greater administrative simplicity and stability.

Specifically, USTA has proposed that all jurisdictional allocation percentages and category relationships be frozen immediately based on annual data as of December 31, 1997 for price cap LECs. For non-price cap LECs, only the jurisdictional allocation percentages would be frozen based on a three year average of data from 1994 through 1996. The specific rule language and a matrix of the Part 36 rules as included in USTA's December 10, 1997 comments are attached. These modifications meet the Joint Board's stated criteria that jurisdictional separations be competitively neutral, administratively simple and maintain cost causation principles. In addition, USTA's proposal avoids significant jurisdictional cost shifts and the associated impacts on customers, can be implemented immediately, introduces a degree of stability into the separations process which will facilitate planning for expenditures to maintain known relationships and will not impact other rules. USTA urges the Joint Board to address this issue and the Commission to implement it as soon as possible.

PART 41 - TELEGRAPH AND TELEPHONE FRANKS.

USTA concurs with the Commission's proposal to eliminate Part 41.[40] The Commission's tentative conclusions, "that the reality of competition and the discipline of

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[40] 1998 Biennial Regulatory Review — Elimination of Part 41 Telegraph and Telephone Franks, CC Docket No. 98-119, *Notice of Proposed Rulemaking*, FCC 98-152 (rel. Jul.21, 1998).

competitive markets for interstate and international services obviates the need for any special record keeping or other regulatory requirements" are correct. USTA's analysis of the application of these rules revealed that the franking privilege is rarely if ever utilized and that the Part 41 rules are no longer necessary.

PART 42 - PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS.

Part 42 of the Commission's rules prescribes regulations governing the preservation of records by common carriers. Given the de-regulatory objective of the 1996 Act and the fact that carriers must retain records for legal and financial purposes, the Part 42 record retention rules are superfluous and unnecessary. So long as certain records are available for review by the Commission, carriers should be permitted to determine the most efficient manner in which to conduct their record keeping. Further, specific requirements regarding machine-readable format are outdated, as many carriers are keeping records in electronic format. Since carriers must already retain toll records for law enforcement purposes as required under 28 U.S.C. § 1732, there is no justification to maintain these rules. Therefore, USTA recommends that Sections 42.01 through 42.07 be eliminated. USTA does recommend that the Commission retain Section 42.11 regarding the public availability and retention of information concerning detariffed interexchange services. These rules do not contain specific requirements and are thus less onerous than the other sections contained in this part. However, these rules could be moved to Part 61 and the Commission could eliminate all of Part 42.

PART 43 - REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES.

USTA recommends that the Commission eliminate the majority of reports required in Part 43 of the Commission's rules. The Automated Reporting Management Information Systems (ARMIS) reports have outlived their usefulness, pose unnecessary and costly administrative burdens and provide an advantage to the competitors of incumbent LECs contrary to the de-regulatory, pro-competitive national telecommunications policy required by the 1996 Act. These reports are not needed to meet any statutory obligation contained in the Act. The tariff process provides the Commission with the information needed to ensure that rates are just and reasonable. Streamlined cost allocation manuals can be maintained to provide relevant information as will be discussed below. The time and expense required to compile, update and file these reports simply diverts resources from providing customers with the services they demand. The competitive information contained in the reports is used by competitors of incumbent LECs to give themselves an advantage in the marketplace since they do not have to provide such information.

Further, there are many less burdensome alternatives for the Commission to consider. For example, the Commission itself, noting that reporting requirements are burdensome, stated that it would not impose additional reporting and would utilize surveys or statistical analysis to make the evaluations necessary under Section 254(c)(1) of the Act.[41] Other Sections of the Act, such as 260 and 276, provide the Commission with the authority to oversee certain incumbent LEC activities; however, none of them call for the excessive detail contained in the current rules.

[41] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, (rel. May 8, 1997) at ¶ 107.

USTA recommended that the Commission issue a Notice of Inquiry applicable to all telecommunications carriers, not just incumbent LECs, to obtain information on local competition.[42] Relevant financial information can be obtained from the 10K form which all corporations file with the SEC. Annual shareholder reports could also be utilized. Service quality specifications are included in tariffs, service agreements and other publicly available sources. Further, when the Commission requires information, the Commission generally issues a data request.[43] That way it can limit the request to the specific information it requires. Such an approach ensures that the Commission receives pertinent information which is not contained in the ARMIS reports. The use of such alternatives to obtain data would be competitively neutral if applied to all service providers, would provide the Commission with relevant, public information and would significantly reduce administrative costs.

At a minimum, USTA recommended streamlining these reports in its comments in CC Docket No. 98-117.[44] USTA proposed a single, annual report, ARMIS 43-00, to replace the current 43-01 through 43-04 reports required in Section 43.21 of the rules. This report would reduce the number of pages to be filed from 191 to 5. The new report would contain four Tables: Balance Sheet Investment, Income Statement, Footnotes and Accounts Payable to Affiliates. The format is consistent with the current 43-01, the SEC Form 10K and the annual shareholder

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[42]USTA Comments, Local Competition Survey, CC Docket No. 91-141, CCB-IAD File No. 98-102, June 8, 1998.

[43]Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket No. 97-160, *Order*, DA 98-1576 (rel. August 7, 1998).

[44]1998 Biennial Regulatory Review — Review of ARMIS Reporting Requirements, CC Docket No. 98-117, *Notice of Proposed Rulemaking*, FCC 98-147 (rel. July 17, 1998).

reports. Specific changes are listed below and are included in the attached matrix and rules language. The new report:

--Eliminates cash flow information which is already available from existing external reports;

--Eliminates demand data from Table 2 of the 43-01 since interstate minutes of use and access lines are already reported in the Tariff Review Plan.

--Eliminates tables from the 43-02 which relate to rate of return regulation;

--Eliminates tables from the 43-02 involving transactions with affiliates;

--Eliminates the 43-02 plant and depreciation reserve tables;

--Reduces the Part 69 reporting categories currently contained in the 43-01 from sixteen to six;

--Maintains the Part 64 requirements for reporting nonregulated financials, but at a reduced level of detail;

--Eliminates the Joint Use Forecast and Actual Reports (495A and 495B); and,

--Maintains the Class B level of detail consistent with Part 36.

These changes reduce the volume and complexity of the current ARMIS reports, are consistent with the requirements of Section 11, minimize the reporting burden and maintain the quality and use of the information included in the reports. If, after weighing the cost and benefits of these requirements, the Commission determines that they must be continued, USTA urges the Commission to adopt the streamlined version described above.

USTA also recommended that the Commission eliminate the ARMIS network reports. These reports were developed to assist the Commission in monitoring service quality and infrastructure development when price cap regulation was first adopted. Price cap regulation has been in effect for almost a decade and quality of service has not deteriorated. Given their